RECORD AND BRIEFS

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IN THE

Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,

Petitioners,

v.

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH AND NINTH CIRCUITS

BRIEF OF HUMAN RIGHTS FIRST, NO ONE LEFT BEHIND, AND VIETNAM VETERANS OF AMERICA AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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Hawaii v. Trump,
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Hawaii v. Trump,
859 F.3d 741 (9th Cir. 2017) 6

Int'l Refugee Assistance Project v. Trump,
241 F. Supp. 3d 539 (D. Md. 2017) 5

Int'l Refugee Assistance Project v. Trump,
857 F.3d 554 (4th Cir. 2017), *as amended* (May 31, 2017), *as amended* (June 15, 2017), *cert. granted*, 137 S. Ct. 2080 (2017). 6

State v. Trump,
No. CV 17-00050 DKW-KSC, 2017 WL 2989048 (D. Haw. July 13, 2017) 7

Trump v. Hawaii,
No. 16-1540, 2017 WL 3045234 (U.S. July 19, 2017) 8

Trump v. Int'l Refugee Assistance Project,
137 S. Ct. 2080 (2017) 7

STATUTES

8 U.S.C. § 1522 11

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8 U.S.C.A. § 1101(a)(42) 12

8 U.S.C.A. § 1158(b)(2)(A)(i)-(vi) 13

8 U.S.C. § 1522 11

Refugee Crisis in Iraq Act, S. 1651, 110th Cong. (2007) 16

Refugee Crisis in Iraq Act of 2007, Pub. Law No. 110-181, 122 Stat. 395 (2008) 17, 18, 19

EXECUTIVE MATERIALS

Exec. Order No. 13,769, 82 Fed. Reg. 8,977 (Jan. 27, 2017) 3, 4

Exec. Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 6, 2017) 4, 5

OTHER AUTHORITIES

Andrew Hosken, *Syrian Child Refugees 'Being Exploited in Jordan'*, BBC NEWS (Nov. 4, 2015), http://www.bbc.com/news/world-middle-east-34714021 31

TABLE OF AUTHORITIES
(continued)

Page

Bethan McKernan, *ISIS Hails Donald Trump's Muslim Immigration Restrictions as a 'Blessed Ban,'* THE INDEPENDENT (Jan. 30, 2017, 11:40 AM), http://www.independent.co.uk/news/world/middle-east/isis-donald-trump-muslim-ban-immigration-iraq-iran-restrictions-travel-islamic-state-us-visa-a7552856.html 47

Bill Frelick, *Syrian Refugee Kids Still Out of School in Turkey*, Human Rights Watch (Jan. 23, 2017), https://www.hrw.org/news/2017/01/23/syrian-refugee-kids-still-out-school-turkey 27

Brookings, *Syrian Refuges and the Slow March to 'Acceptance'* (2017), https://www.brookings.edu/blog/future-development/2017/09/07/syrian-refugees-and-the-slow-march-to-acceptance/ 28

TABLE OF AUTHORITIES
(continued)

Page

Corrected Br. of Former National Security Officials as Amici Curiae in Support of Plaintiff-Appellees and Against a Stay Pending Appeal, *IRAP v. Trump*, No. 8:17-cv-00361-TDC (4th Cir. Apr. 13, 2017), https://cases.justia.com/federal/appellate-courts/ca4/17-1351/126/0.pdf?ts=1494442944. .....33, 36

DAILY SABAH, *Turkey's Unemployment Rate Rises to 12.6 Percent in February* (May 15, 2017). https://www.dailysabah.com/economy/2017/05/15/turkeys-unemployment-rate-rises-to-126-percent-in-february.....27

Dan Lamothe, *Among Veterans, Raw Responses to Trump's Effort to Block Refugees and Others from Muslim Countries*, WASH. POST (Jan 29, 2017), https://www.washingtonpost.com/news/checkpoint/wp/2017/01/29/among-veterans-raw-responses-to-trumps-effort-to-block-refugees-and-others-from-muslim-countries/?utm_term=.0d74b8cb980e 36

TABLE OF AUTHORITIES
(continued)

Page

David Brody, *Trump Says Persecuted Christians Will be Given Priority as Refugees,* CBN NEWS, (Jan. 27, 2017), http://www1.cbn.com/thebrodyfile/archive/2017/01/27/brody-file-exclusive-president-trump-says-persecuted-christians-will-be-given-priority-as-refugees 4

David Cohen, *How Trump Hurts the Spying Business*, N.Y. Times (May 16, 2017), http://www.nytimes.com/2017/05/16/opinion/how-trump-hurts-the-spying-business.html?_r=0 37

Dexter Filkins, *James Mattis, A Warrior in Washington*, THE NEW YORKER (May 29, 2017), http://www.newyorker.com/magazine/2017/05/29/james-mattis-a-warrior-in-washington 44

Doris Meissner & James W. Ziglar, *Halting Refugee Resettlement Compromises the Security of All,* THE HILL (Dec. 3, 2015), http://thehill.com/blogs/congress-blog/foreign-policy/261840-halting-refugee-resettlement-compromises-the-security-of 9

TABLE OF AUTHORITIES
(continued)

Page

Eliza Mackintosh, *Trump Ban Is Boon for ISIS Recruitment, Former Jihadists and Experts Say*, CNN (Jan. 31, 2017, 10:51 AM), http://www.cnn.com/2017/01/30/politics/trump-ban-boosts-isis-recruitment/index.html 46, 47

Francis Chan & Trinna Leong, *Travel Ban Stirs Unease In Indonesia, Malaysia*, THE STRAITS TIMES (Feb. 5, 2017, 5:00 AM), http://www.straitstimes.com/asia/travel-ban-stirs-unease-in-indonesia-malaysia. 45

Frelick, Bill, "Syrian Refugee Kids Still Out of School in Turkey," (Jan. 23, 2017), https://www.hrw.org/news/2017/01/23/syrian-refugee-kids-still-out-school-turkey 27

TABLE OF AUTHORITIES
(continued)

Page

Harvard Law School, *Fulfilling U.S. Commitment to Refugee Resettlement: Protecting Refugees, Preserving National Security & Building the U.S. Economy through Refugee Admissions* (2017), https://harvardimmigrationclinic.files.wordpress.com/2017/06/syria-final-draft-v9.pdf ..... passim

The Heritage Foundation, *The U.S. Refugee Admissions Program: A Roadmap for Reform* (2017), http://www.heritage.org/sites/default/files/2017-07/BG3212.pdf....21, 23, 25, 28

Hollie McKay, *U.S.-backed Iraqi Fighters say Trump's Refugee Ban Feels like 'Betrayal,'* FOX NEWS (Jan. 27, 2017), http://www.foxnews.com/politics/2017/01/27/u-s-backed-iraqi-fighters-say-trumps-refugee-ban-feels-like-betrayal.html 36

Human Rights First, *Fact Sheet, President Trump's Executive Order on Refugees Harms Our Iraqi Allies* (2017), http://www.humanrightsfirst.org/sites/default/files/P2-SIV-Iraqis-Factsheet.pdf ..... passim

TABLE OF AUTHORITIES
(continued)

Page

Human Rights First, *Living in Limbo: Iraqi Refugees and U.S. Resettlement* 29 (Dec. 2010).....16, 17, 20, 34

Human Rights First, *The Syrian Refugee Crisis and the Need for U.S. Leadership* (Feb. 2016), https://www.humanrightsfirst.org/sites/default/files/HRFSyrianRefCrisis.pdf. ..... passim

Human Rights First, *U.S. Leadership Forsaken: Six Months of the Trump Refugee Bans* (2017), http://www.humanrightsfirst.org/resource/us-leadership-forsaken-six-months-trump-refugee-bans. ..... passim

Human Rights Watch, *Barriers to Education for Syrian Refugee Children in Jordan: Summary* (Aug. 16, 2016), https://www.hrw.org/report/2016/08/16/were-afraid-their-future/barriers-education-syrian-refugee-children-jordan. 31

TABLE OF AUTHORITIES
(continued)

Page

Human Rights Watch, *Turkey: 400,000 Syrian Children Not in School* (2015), https://www.hrw.org/news/2015/11/08/turkey-400000-syrian-children-not-school. 26

International Crisis Group, *Turkey's Refugee Crisis: The Politics of Permanence* (2016), https://www.crisisgroup.org/europe-central-asia/western-europe-mediterranean/turkey/turkey-s-refugee-crisis-politics-permanence.....26

Jason Riley, *Mistrusting Obama on ISIS – and Refugees*, WALL ST. J. (Nov. 18, 2015, 2:37 PM), https://www.wsj.com/articles/mistrusting-obama-on-isisand-refugees-1447803738 .....49, 50

Jeff Stein, *Spy Veterans Say Trump's Muslim Country Visa Ban Will Hurt Recruitment*, Newsweek (Jan. 28, 2017 7:32 PM), http://www.newsweek.com/spy-veterans-trump-visa-ban-hurt-recruitment-549588. 37

TABLE OF AUTHORITIES
(continued)

Page

Joby Warwick, *Jihadist Groups Hail Trump's Travel Ban as a Victory*, WASH. POST (Jan. 29, 2017), https://www.washingtonpost.com/world/national-security/jihadist-groups-hail-trumps-travel-ban-as-a-victory/2017/01/29/50908986-e66d-11e6-b82f-687d6e6a3e7c_story.html?utm_term=.2595e0d4b6e0 .....46, 47, 48

Joint Decl. of Madeleine K. Alrbight, Avril D. Haines, Michael V. Hayden, John F. Kerry, John E. McLaughlin, Lisa O. Monaco, Michael J. Morell, Janet A. Napolitano, Leon E. Panetta, Susan E. Rice, *Washington v. Trump*, No. 17-35105 (9th Cir. 2017), https://assets.documentcloud.org/documents/3454270/Declaration-of-National-Security-Officials.pdf 37

Letter from Former National Security Leaders to U.S. Congress (Dec. 2015), http://www.humanrightsfirst.org/sites/default/files/FormerNatSecOfficialsLetterRefugees.pdf 20, 22, 49, 50

TABLE OF AUTHORITIES
(continued)

Page

Letter from Bipartisan Group of Former Officials to President Donald J. Trump, Human Rights First (Mar. 10, 2017), http://www.humanrightsfirst.org/sites/default/files/LetterFormerOfficialsonMarch6EO.pdf 21, 34

Letter to Secretary Kelly, et. al. from Over 100 Former Officials (Jan. 30, 2017), http://www.politico.com/f/?id=00000159-f0ef-d46b-abdf-f4efdd310001 45

Letter from Veterans for American Ideals to President Donald J. Trump (Jan. 29, 2017) 33

Matt Zeller, *Leave No Interpreter Behind*, USA TODAY (June 22, 2015), https://www.usatoday.com/story/opinion/2015/06/22/afghanistan-iraq-army-interpreters-resettlement-column/28905403/ 33

TABLE OF AUTHORITIES
(continued)

Page

Michael V. Hayden, *Former CIA Chief: Trump's Travel Ban Hurts American Spies – and America*, Wash. Post (Feb. 5, 2017), https://www.washingtonpost.com/opinions/former-cia-chief-trumps-travel-ban-hurts-american-spies--and-america/2017/02/05/a5acce36-ebd9-11e6-9973-c5efb7ccfb0d_story.html?utm_term=.155afc6ba632 37

Michael V. Hayden & James Stavridis, *U.S. Must Lead On Refugee Crisis*, MIAMI HERALD (July 8, 2016), http://www.miamiherald.com/opinion/op-ed/article88582362.html. 25, 49

National Public Radio, *In Lebanon, Syrian Refugees Met With Harassment and Hostility* (Sept. 2, 2017), http://www.npr.org/sections/parallels/2017/09/02/547906231/in-lebanon-syrian-refugees-met-with-harassment-and-hostility 29

TABLE OF AUTHORITIES
(continued)

Page

National Public Radio, *National Security Council Changes Are Very Significant, Hayden Says* (Jan. 30, 2017, 4:58 AM), http://www.npr.org/2017/01/30/512400246/former-nsa-director-weighs-in-on-national-security-council-changes 47

Nyshka Chandran, *Trump's Immigration Order Troubles Muslim-Majority Indonesia, Malaysia*, CNBC (Jan. 29, 2017, 8:01 PM), https://www.cnbc.com/2017/01/29/trumps-immigration-order-reverberates-to-indonesia-malaysia.html 45

Oxfam, *Syrian Refugee Influx Adding to Jordan's Water Worries* (2013), https://www.oxfam.ca/blogs/conflict-emergencies/refugee-influx-adding-to-jordans-water-worries 30

PBS NEWSHOUR, *Immigration Ban Misses Greatest Threat, Counterterrorism Expert Says* (Jan. 31, 2017, 6:45 PM), http://www.pbs.org/newshour/bb/immigration-ban-misses-greatest-threat-counterterrorism-expert-says/ 43, 45

TABLE OF AUTHORITIES
(continued)

Page

Peter James Kiernan, *A Former MARSOC Raider Explains how the Travel Ban Endangers Special Operations Forces*, Task & Purpose (Feb. 2, 2017), http://taskandpurpose.com/former-marsoc-raider-explains-travel-ban-endangers-special-operations-forces/ 42, 43

Phillip Connor & Jens Manuel Krogstad, *In First Months of Trump Presidency, Christians Account for Growing Share of U.S. Refugee Arrivals*, Pew Research Center (July 12, 2017), http://www.pewresearch.org/fact-tank/2017/07/12/in-first-months-of-trump-presidency-christians-account-for-growing-share-of-u-s-refugee-arrivals/ 39

Rana F. Sweis, *Resentment Grows Against Syrian Refugees in Jordan*, N.Y. TIMES (May 9, 2013), http://www.nytimes.com/2013/05/09/world/middleeast/09iht-m09-jordan-syria.html 32

TABLE OF AUTHORITIES
(continued)

Page

Ruth Sherlock, *Jordan Repeals Free Medical Aid for Syrian Refugees*, THE TELEGRAPH (Nov. 28, 2014), http://www.telegraph.co.uk/news/worldnews/middleeast/syria/11261468/Jordan-repeals-free-medical-aid-for-Syrian-refugees.html 31

Ryan Crocker, *The Case for Accepting Syrian Refugees*, WALL ST. J. (Nov. 17, 2015), https://www.wsj.com/articles/the-case-for-accepting-syrian-refugees-1447803302 24

Sarah Lyons-Padilla & Michele J. Gelfand, *The Social Scientific Case Against a Muslim Ban*, N.Y. Times (Feb. 18, 2017), https://www.nytimes.com/2017/02/18/opinion/sunday/the-social-scientific-case-against-a-muslim-ban.html 48, 49

Tim Arango, *'You Have Let Us Down, Trump': Iraqis See U.S. Relations Recast*, N.Y. TIMES (Jan. 30, 2017) https://www.nytimes.com/2017/01/30/world/middleeast/iraq-trump-refugee-ban.html?mcubz=1 35

TABLE OF AUTHORITIES
(continued)

Page

UNHCR, *Global Trends: Forced Displacement in 2016* (June 20, 2017), http://www.unhcr.org/5943e8a34 ..... 9, 26

UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* ¶ 9, http://www.unhcr.org/4d93528a9.pdf 11

UNHCR, *Jordan Factsheet* (2017), http://reliefweb.int/sites/reliefweb.int/files/resources/JordanFactSheetJanuary2017-FINAL.pdf 31

UNHCR, *Lebanon: Refugee and Asylum Seekers* (2017), http://reporting.unhcr.org/node/15981 28

UNICEF, *Over 40 Per Cent of Syrian Refugee Children in Turkey Missing Out on Education, Despite Massive Increase in Enrollment Rates* (2017) www.unicef.org/media/media_94417.html 27

United Nations Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137 11

TABLE OF AUTHORITIES
(continued)

Page

United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 11

United Nations Office of the Secretary-General's Envoy on Youth, *New Study Finds Child Marriage Rising Among Most Vulnerable Syrian Refugees* (Feb. 8, 2017), http://www.un.org/youthenvoy/2017/02/new-study-finds-child-marriage-rising-among-vulnerable-syrian-refugees/. 31

U.S. Citizenship and Immigration Servs., *Refugee Processing and Security Screening* (Dec. 3, 2015), https://www.uscis.gov/refugee-screening 10, 13, 14

U.S. Citizenship and Immigration Servs., *The United States Refugee Admissions Program (USRAP) Consultation & Worldwide Processing Priorities* (May 5, 2016) https://www.uscis.gov/humanitarian/refugees-asylum/refugees/united-states-refugee-admissions-program-usrap-consultation-worldwide-processing-priorities 18

TABLE OF AUTHORITIES
(continued)

Page

U.S. Dep't of the Army, FM 3-24, Counterinsurgency A-5 (2006), http://usacac.army.mil/cac2/Repository/Materials/COIN-FM3-24.pdf 42

U.S. Dep't of State, Bureau of Consular Affairs, *Special Immigrant Visas for Iraqis – Who Were Employed by/on Behalf of the U.S. Government*, https://travel.state.gov/content/visas/en/immigrate/iraqis-work-for-us.html 17

U.S. Dep't of State, *U.S. Refugee Admissions Program*, https://www.state.gov/j/prm/ra/admissions/index.htm 12, 13, 14, 15

U.S. Dep't of State, *U.S. Refugee Admissions Program FAQs* (Jan. 20, 2017), https://www.state.gov/j/-prm/releases/factsheets/2017/266447.htm 10

U.S. Dep't of State, *U.S. Refugee Admissions Program (USRAP) Direct Access Program for U.S.-affiliated Iraqis* (Mar. 11, 2016), https://www.state.gov/j/prm/releases/factsheets/2016/-254650.htm 19, 33

TABLE OF AUTHORITIES
(continued)

Page

The White House, *Remarks by President Trump and His Majesty King Abdullah II of Jordan in Joint Press Conference* (Apr. 5, 2017), https://www.whitehouse.gov/the-press-office/2017/04/05/remarks-president-trump-and-his-majesty-king-abdullah-ii-jordan-joint 29

The White House, *Two Former Homeland Security Secretarie Wrote President Obama on Safely Welcoming Syrian Refugees* (Nov. 19, 2015), https://obamawhitehouse.archives.gov/blog/2015/11/19/two-former-homeland-security-secretaries-wrote-president-obama-safely-welcoming 20, 22

INTEREST OF THE *AMICI CURIAE*

Amicus Curiae Human Rights First (formerly known as the Lawyers Committee for Human Rights) is a nonprofit, nonpartisan international human rights organization that has worked since 1978 to promote fundamental human rights and protect refugees' rights. Human Rights First grounds its refugee protection work in the standards set forth in the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees, the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, and other international human rights instruments.

In November 2015, Human Rights First launched a project, Veterans for American Ideals ("VFAI"), to engage veterans to continue advocating for policies that uphold the human rights ideals that first motivated them to serve in the armed forces. VFAI leverages veterans' experiences, leadership abilities, and credibility to advance those ideals, including working to ensure safe passage to the United States of translators

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[1] This brief was paid for entirely by the amici and/or their attorneys. No counsel for any party has authored this brief in whole or in part, and no party or counsel for a party has made a monetary contribution to the preparation or submission of this brief. Petitioner and Respondents consent to the filing of this brief.

and others who worked with the U.S. military and other U.S. entities in Iraq and Afghanistan, to advocate for the protection of refugees through refugee resettlement, and to challenge the rise of anti-Muslim rhetoric and policies.

Amicus Curiae No One Left Behind is a veterans organization dedicated to helping Afghan and Iraqi wartime allies with special immigrant visas resettle safely in the United States. This includes providing assistance with the visa process, and with housing, employment, and cultural adaptation upon arrival in the United States.

Amicus Curiae Vietnam Veterans of America is the only national Vietnam veterans organization congressionally chartered and exclusively dedicated to Vietnam-era veterans and their families. Their mission is to promote and support the full range of issues important to all veterans, to create a new identity for this generation of veterans, and to change public perception of Vietnam veterans.

These consolidated cases test the legal and constitutional validity of President Donald Trump's Executive Order No. 13,780 (the "Executive Order" or "Order"). Among other things, the Order temporarily suspends the United States Refugee Admissions Program (the "USRAP"). Consequently, thousands of refugees otherwise eligible for resettlement in the United States have

been stranded across the globe, inflicting pointless suffering and harm. The purpose of this *amici* brief is to explain why the Executive Order is indeed needless, and how and why it harms the security interests of the United States, as well as the interests of its critical allies.

STATEMENT

I. The First Executive Order

On January 27, 2017, President Trump signed the first of two executive orders entitled "Protecting the Nation from Foreign Terrorist Entry into the United States."[2] The first order temporarily prohibited entry of all nationals from seven majority-Muslim countries, and directed the Secretary of State to "suspend the U.S. Refugee Admissions Program (USRAP) for 120 days."[3] While the USRAP was suspended, the order provided that "the Secretaries of State and Homeland Security may jointly determine to admit individuals to the United States as refugees on a case-by-case basis . . . only so long as they determine that the admission of such individuals as refugees in in the national interest – including when the person is a religious minority in his country of nationality facing religious persecution[.]"[4]

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[2] Exec. Order No. 13,769, 82 Fed. Reg. 8,977 (Jan. 27, 2017).

[3] *Id.* at 8979.

[4] *Id.*

Upon resumption of the USRAP, the first order directed similar religious minority prioritization and instructed the Secretary of State, in consultation with the Secretary of Homeland Security, to "prioritize refugee claims made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a minority religion in the individuals' country of nationality."[5]

The first executive order sparked numerous lawsuits across the country. Following a series of adverse judicial rulings, the Government withdrew the order.

II. The Second Executive Order

President Trump issued the second Executive Order on March 6, 2017, which Order bears the same title as its predecessor.[6] In section 2(c), the Executive Order prohibits for 90 days entry of all nationals from six of the seven majority-Muslim countries named in the first order, excepting

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[5] *Id.*; *see also* David Brody, *Trump Says Persecuted Christians Will be Given Priority as Refugees.* CBN NEWS, (Jan. 27, 2017), http://www1.cbn.com/thebrodyfile/archive/2017/01/27/brody-file-exclusive-president-trump-says-persecuted-christians-will-be-given-priority-as-refugees (Interview with President Trump where he stated the prioritization of religious minorities was intended to favor Christian Refugees.).

[6] Exec. Order 13,780, 82 Fed. Reg. 13,209 (Mar. 6, 2017).

only nationals of Iraq.[7] Like the first order, the Executive Order in section 6 "suspend[s] travel of refugees into the United States under the USRAP" and suspends decisions on applications for refugee status for 120 days.[8] In spite of the suspension of the USRAP, "the Secretary of State and Secretary of Homeland Security may jointly determine to admit . . . refugees on a case-by-case basis, in their discretion, but only so long as they determine that the entry of such individuals as refugees is in the national interest and does not pose a threat to the security or welfare of the United States."[9] Section 6(b) caps the number of refugees who may enter in 2017 to 50,000.[10] Unlike the first order, the Executive Order does not expressly prefer religious minorities.

III. The *IRAP* Litigation

Six individuals and three organizations challenged section 2(c) of the Executive Order under the INA and the Establishment Clause.[11] After expedited briefing and argument, the Maryland District Court enjoined section 2(c) and held that the three individuals had standing to chal-

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[7] *Id.* at 13211-2.
[8] *Id.* at 13215-6.
[9] *Id.* at 13216.
[10] *Id.*
[11] *Int'l Refugee Assistance Project v. Trump*, 241 F. Supp. 3d 539 (D. Md. 2017).

lenge the section on statutory grounds. The Government appealed to the Fourth Circuit, which subsequently affirmed in part and reversed in part, and sought a stay, which was denied.[12] On June 1, 2017, the Government sought a stay from this Court, which consolidated the Fourth Circuit matter with litigation in the Ninth Circuit and entered various orders discussed below.

IV. The *Hawaii* Litigation

On March 7, 2017, the State of Hawaii brought an action challenging the Executive Order. On March 15, 2017, the Hawaii District Court issued a temporary restraining order preventing sections 2 and 6 of the Order from going into effect, finding that the State of Hawaii showed a strong likelihood of success on the Establishment Clause claim asserting that the Order was in fact a "Muslim ban."[13] After the Ninth Circuit affirmed,[14] the Government sought review in this Court.

This Court consolidated the Fourth and

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[12] *Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554 (4th Cir. 2017), *as amended* (May 31, 2017), *as amended* (June 15, 2017), *cert. granted*, 137 S. Ct. 2080 (2017).

[13] *Hawai'i v. Trump*, 241 F. Supp. 3d 1119, 1134 (D. Haw. 2017).

[14] *Hawaii v. Trump*, 859 F.3d 741 (9th Cir. 2017).

Ninth Circuit matters and granted certiorari review.[15] The Court also modified the preliminary injunction, stating that the "Government's interests in enforcing § 2(c) . . . are undoubtedly at their peak when there is no tie between the foreign national and the United States."[16] Accordingly, this Court stayed the injunction to "the extent the injunction[] prevent[s] enforcement of § 2(c) with respect to foreign nationals who lack any bona fide relationship with a person or entity in the United States."[17] The stay also applied to relief from section 6 of the Executive Order for those "refugees who lack any such connection to the United States."[18]

Following this Court's ruling, the State of Hawaii filed an emergency petition in the Hawaii District Court challenging the Government's interpretation of this Court's order regarding the scope of permissible entries. The District Court ordered modifications to the Government's interpretation.[19] The Government appealed directly to this Court, which stayed the ruling in part pending resolution of the Government's appeal to the

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[15] *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080 (2017).

[16] *Id.* at 2088.

[17] *Id.* at 2087.

[18] *Id.* at 2089.

[19] *State v. Trump*, No. CV 17-00050 DKW-KSC, 2017 WL 2989048 (D. Haw. July 13, 2017).

Ninth Circuit.[20] On September 7, 2017, the Ninth Circuit affirmed the District Court's modifications, which also was subsequently stayed in part.

SUMMARY OF THE ARGUMENT

The Executive Order imposes a needless and counterproductive travel ban. The ban is needless because refugees, especially those targeted by the ban, are already exhaustively vetted and screened for national security risks. The ban is counterproductive because it harms national security interests in critical ways without supplying corresponding benefit. As former military and national security officials have made clear, the ban jeopardizes the stability of U.S. allies, erodes essential good will by reneging on promises made to certain refugee groups, makes it more difficult for the United States to recruit heart-and-minds support abroad, otherwise undermines the ability of the United States to pursue military operations, and endangers U.S. military personnel.

Regardless of the intentions behind the Executive Order, it is understandably perceived domestically and abroad as a "Muslim Ban," fueling the perception that the United States is at war with Islam. This only feeds into the propaganda narrative of terrorists seeking to harm U.S. interests. Because the ban inflicts injury and suffering

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[20] *Trump v. Hawaii*, No. 16-1540, 2017 WL 3045234, at *1 (U.S. July 19, 2017).

without justifying benefit, the decisions of the courts below should be affirmed.

ARGUMENT

I. In Enacting the Travel Ban, the United States Ignores Vetting Protections Already in Place, Jeopardizes the Stability of U.S. Allies, and Breaks U.S. Promises to Iraqi Refugees.

In the midst of the largest worldwide refugee crisis ever,[21] the United States cites national security to justify its decision to enact the travel ban and accept fewer refugees for resettlement. Blocking refugees, however, harms more than helps U.S. national security interests. Among other things, the travel ban jeopardizes the stability of U.S. allies in the Middle East, betrays promises to Iraqis who risked everything to assist our efforts in the region, and undermines U.S. military operations and personnel.

A. Refugees Are Already Rigorously Vetted.

The travel ban is needless because the U.S. refugee vetting process is already rigorous, lengthy, and effective. Notably, the ban impacts vulnerable refugees who have already passed

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[21] UNHCR, *Global Trends: Forced Displacement in 2016* 3 (June 20, 2017), http://www.unhcr.org/5943e8a34.

through a vetting process that is "the most rigorous screening of any such program elsewhere in the world."[22] Indeed, according to the U.S. State Department, refugees undergo the "most intensive security screening of any traveler to the United States."[23] By blocking these vetted refugees, the ban ignores the safeguards already in place, causing additional hardship and pointless suffering.

Refugees are recognized by national and international principles as among the "world's most vulnerable people."[24] Their status as a class requiring heightened protections and international cooperation is enshrined in the United Nations Convention Relating to the Status of Refugees (the "Convention") and the 1967 Protocol to the

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[22] Doris Meissner & James W. Ziglar, *Halting Refugee Resettlement Compromises the Security of All*, THE HILL (Dec. 3, 2015), http://thehill.com/blogs/congress-blog/foreign-policy/261840-halting-refugee-resettlement-compromises-the-security-of.

[23] U.S. Dep't of State, *U.S. Refugee Admissions Program FAQs* (Jan. 20, 2017), https://www.state.gov/j/-prm/releases/factsheets/2017/266447.htm. Syrian refugees are subject to even more heightened security screening. *See* U.S. Citizenship and Immigration Servs., *Refugee Processing and Security Screening* (Dec. 3, 2015), http://www.uscis.gov/refugeescreening.

[24] U.S. Dep't of State, *U.S. Refugee Admissions Program FAQs* (Jan. 20, 2017), https://www.state.gov/j/prm/releases/ factsheets/2017/266447.htm.

Convention (the "Protocol").[25] According to the Convention and Protocol, the term refugee "shall apply," *inter alia*, to any person who:

> owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country[.][26]

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[25] United Nations Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137 [hereinafter Convention] and United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 [hereinafter Protocol], http://www.unhcr.org/en-us/protection/basic/3b66c2aa10/convention-protocol-relating-status-refugees.html. The United States is party to the Protocol and has "undertake[n] to apply articles 2 to 34 inclusive of the Convention" to refugees by virtue of its accession. Protocol, art. 1(1); *see also* UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* ¶ 9, http://www.unhcr.org/4d93528a9.pdf ("By accession to the 1967 Protocol, States undertake to apply the substantive provisions of the 1951 Convention to refugees as defined in the Convention, but without the 1951 dateline."). The United States has codified certain principles of these conventions as part of national law. *See* 8 U.S.C. § 1522.

[26] Convention, art. 1(A)(2); Protocol, art. 1 (extending the Convention definition of refugee to encompass those who became refugees due to events that proceeded January

In other words, refugees are by definition victims of persecution, not perpetrators of it. These victims then undergo multiple layers of the most exacting forms of scrutiny before they are resettled in the United States.

The vetting process typically begins with the office of the United Nations High Commissioner for Refugees ("UNHCR"), which interviews and screens the applicant, and determines whether the applicant may qualify as a refugee and where the applicant may resettle.[27] Next, the

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1951). Under U.S. law, a refugee is similarly defined as "[a]ny person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion[.]" 8 U.S.C. § 1101(a)(42).

[27] *See* U.S. Dep't of State, *U.S. Refugee Admissions Program*, https://www.state.gov/j/prm/ra/admissions/index.htm. In certain circumstances, specially trained non-governmental organizations will identify the refugee and begin this process. *See id.* Certain refugees may start the application process without a referral from the UNHCR or entity. *Id.* These refugees are often close relatives of asylees and refugees already in the U.S., or belong to specific groups identified in by statute or the U.S. Department of State as eligible for direct access to the refugee and resettlement program. *Id.*

Resettlement Support Center ("RSC")[28] will interview the applicant and enter the relevant application document into the Department of State's Worldwide Refugee Admission Processing System ("WRAPS"), cross reference and verify the data, and send information required for a background check to other U.S. agencies.[29] Multiple national security agencies, including the National Counterterrorism Center, Department of Homeland Security ("DHS"),[30] Federal Bureau of Investigations ("FBI"),[31] Department of State, and intelligence agencies will screen the applicant and assess any security threats, including any connections to known bad actors, as well as past immigration and criminal violations.[32]

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[28] The RSC is funded by the U.S. Department of State's Bureau of Population, Refugees and Migration ("PRM"). *Id.*

[29] *Id.*

[30] DHS will conduct an advanced screening of Syrian refugees. *Id.*

[31] The FBI and intelligence community partners will conduct and prepare a Security Advisory Opinion ("SAO"), which is a biographic check "for an applicant who is a member of a group or nationality that the United States government has designated as requiring this higher level check." *See* U.S. Citizenship and Immigration Servs., *Refugee Processing and Security Screening* (Dec. 3, 2015), https://www.uscis.gov/refugeescreening.

[32] *Id.* United States refugee law includes several exclusions from refugee status rendering certain categories of individuals ineligible for asylum protections. The exclusions include, for example, a person who participated in persecution or who has been convicted by a final judgment

Once results are screened, the United States Citizenship and Immigration Services ("USCIS"), a component of DHS, will interview the applicant in a host nation or, in exceptional circumstances, in the applicant's country of origin. During this interview, a USCIS officer collects additional biometric data.[33] This biometric data is used to conduct an additional series of checks. Additionally, anytime the applicant's information changes during the process, the information is entered into WRAPS, and new security checks are initiated.[34] Inconsistencies will place the case on hold until resolved.[35] Should the ap-

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of a "particularly serious crime" and therefore "constitutes a danger to the community of the United States[.]" *See* 8 U.S.C. §§ 1158(b)(2)(A)(i)-(vi).

[33] *See* U.S. Citizenship and Immigration Servs., *Refugee Processing and Security Screening* (Dec. 3, 2015), https://www.uscis.gov/refugeescreening. Fingerprints are stored in a DHS database and screened against: the FBI biometric database, the DHS biometric database, and the U.S. Department of Defense database. U.S. Dep't of State, *U.S. Refugee Admissions Program*, http://www.state.gov/j/prm/ra/admissions/index.htm.

[34] U.S. Dep't of State, *U.S. Refugee Admissions Program*, http://www.state.gov/j/prm/ra/admissions/index.htm.

[35] *See id.* The Department of State, through the Consular Lookout and Support System ("CLASS"), will also initiate name checks on the applicant's primary names and any variations used by the applicant. Responses are received before the USCIS conducts its interview, and possible

plication proceed, applicants must complete a cultural orientation course and a medical screening, the results of which are also entered into WRAPS. If the case is cleared, resettlement agency representatives, who meet weekly to review WRAPS information, will determine where to resettle the refugee. Should the applicant be assigned to the United States, the applicant will be subject to further screening from United States Customs and Border Protection, and the Transportation Administration's Secure Flight Program.[36]

A somewhat different, but no less exacting, process applies to certain Iraqi refugees affiliated with the United States ("U.S.-affiliated Iraqis"). The United States' invasion of Iraq in March 2003

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matches are reviewed and adjudicated by USCIS headquarters. If another name or variation is identified during the USCIS interview, another name will be screened through CLASS. *See* U.S. Citizenship and Immigration Servs., *Refugee Processing and Security Screening* (Dec. 3, 2015), https://www.uscis.gov/refugeescreening. CLASS also includes information from: National Counterterrorism Center/Terrorist Screening Center; Treasury Enforcement Communications System, Interpol. Drug Enforcement Administration, Health and Human Services, and FBI. *Id.* Additionally, if, during the process, any national security concerns are raised, USCIS conducts an additional review through the Controlled Application Review and Resolution Process. *Id.*

[36] U.S. Dep't of State, *U.S. Refugee Admissions Program*, http://www.state.gov/j/prm/ra/admissions/index.htm.

created one of the largest humanitarian crises in recent history.[37] The situation became especially perilous for Iraqis who chose to work for the U.S. government, the U.S. military, U.S. contractors, or U.S.-based media groups or nongovernmental organizations ("NGOs").[38] Militia groups within Iraq targeted these individuals and their families with threats, harassment, kidnapping, violence, and murder.[39] The United States provided insufficient attention to the unfolding humanitarian crisis in Iraq—despite its central role in the Iraq war itself and its deep debt to the Iraqis who risked their lives working with and for Americans.[40]

In response, the late Democratic Senator Edward Kennedy and former Republican Senator Gordon Smith introduced the Refugee Crisis in Iraq Act in 2007 (the "RCIA").[41] Recognizing the importance of protecting our Iraqi allies, Senator Kennedy stated that "[r]egardless of where we stand on the war with Iraq, we are united in our belief that America has a fundamental obligation

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[37] *See* Human Rights First, *Living in Limbo: Iraqi Refugees and U.S. Resettlement* 30 (2010).

[38] *Id.* at 29.

[39] *Id.*

[40] *See id.*

[41] *See* Refugee Crisis in Iraq Act, S. 1651, 110th Cong. (2007).

to assist the Iraqis who have courageously supported our forces and our effort in Iraq and whose lives are in peril as a result."[42] Senator Smith likewise spoke of "a national moral commitment to resolving the Iraqi refugee issues as quickly as possible."[43] The RCIA received strong bipartisan support, and President George Bush signed the RCIA into law on January 28, 2008, as part of the Department of Defense Authorization Act for Fiscal Year 2008.[44]

Congress's clear intent in passing the RCIA was to protect Iraqis who were in danger due to their assistance to and relationship with the United States. To accomplish its purpose, Congress structured the law in two ways. First, the RCIA created a new class of Special Immigrant Visas ("SIV") for Iraqis who had worked for the United States.[45] Second, the RCIA designated

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[42] *Living in Limbo*, at 30.

[43] *Id.*

[44] *See* Refugee Crisis in Iraq Act of 2007, Pub. Law No. 110-181, 122 Stat. 395 (2008).

[45] *Id.* § 1244, 122 Stat. 395 (2008). The Iraqi SIV program stopped accepting applications as of September 2014. *See* Human Rights First, *Fact Sheet, President Trump's Executive Order on Refugees Harms Our Iraqi Allies* (2017), http://www.humanrightsfirst.org/sites/default/files/P2-SIV-Iraqis-Factsheet.pdf; *see also* U.S. Dep't of State, Bureau of Consular Affairs, *Special Immigrant Visas for Ira-*

certain Iraqis as "[r]efugees of special humanitarian concern eligible for Priority 2 [("P2")] processing under the refugee resettlement priority system who may apply directly to the [USRAP]."[46] Under the RCIA, Iraqis eligible for P2 processing include those who work or worked in Iraq for the U.S. government, U.S. contractors, or U.S.-based media or NGOs, as well as their close relatives.[47] The RCIA called on the U.S. Secretary of State, in consultation with the Secretary of Homeland Security, to "establish or use existing refugee processing mechanisms in Iraq and in countries, where appropriate, in the region in which . . . [the] aliens described in section 1243 may apply and interview for admission to the United States as refugees."[48] This entire process became known as

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qis – Who Were Employed by/on Behalf of the U.S. Government, https://travel.state.gov/content/visas/en/immigrate/iraqis-work-for-us.html (last visited Sept. 15, 2017).

[46] *See* § 1243, 122 Stat. 395 (2008). USCIS defines three "processing priorities," which enable a refugee applicant the opportunity to interview with a USCIS officer. *See* U.S. Citizenship and Immigration Servs., *The United States Refugee Admissions Program (USRAP) Consultation & Worldwide Processing Priorities* (May 5, 2016), https://www.uscis.gov/humanitarian/refugees-asylum/refugees/united-states-refugee-admissions-program-usrap-consultation-worldwide-processing-priorities.

[47] *See* § 1243, 122 Stat. 395 (2008).

[48] *Id.* § 1242.

the USRAP "Direct Access Program for U.S.-affiliated Iraqis" (the "DAP for U.S.-affiliated Iraqis").[49]

By designating certain U.S.-affiliated Iraqis as eligible for P2 processing through the DAP, the RCIA allows eligible individuals to file for resettlement in the United States *directly with* the United States—eliminating the United Nations referral requirement given their U.S. relationships.[50] Further, while refugees usually must be outside their homelands to be eligible for the USRAP, the RCIA allows eligible Iraqis to apply for P2 processing from *inside* Iraq.[51]

Notably, the DAP for U.S.-affiliated Iraqis does not reduce the legal requirements or security checks needed for resettlement to the United States. All applicants are interviewed by USCIS officers to determine eligibility for resettlement, including whether they meet the refugee definition, present no known security risk, and are otherwise admissible to the United States under federal immigration law. The process is lengthy and exhaustive. Despite the program's goal to bring

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[49] *See* U.S. Dep't of State, *U.S. Refugee Admissions Program (USRAP) Direct Access Program for U.S.-affiliated Iraqis* (Mar. 11, 2016), https://www.state.gov-/j/prm/releases/factsheets/2016/-254650.htm.

[50] *See* § 1242, 122 Stat. 395 (2008).

[51] *Id.*

at-risk U.S.-affiliated Iraqis quickly to safety, Human Rights First estimated in 2010 (based on attorney accounts) that the entire processing time for resettlement under the DAP for U.S.-affiliated Iraqis was 12 to 21 months.[52]

In sum, before *any* refugee can resettle in the United States, national intelligence agencies screen them, scan and check their fingerprints and other biometric data against terrorist and criminal databases, including Interpol—which include data on suspected terrorists and stolen, false, and blank passports from Syria and Iraq—and interview them several times.[53,54] The process is "lengthy and deliberate, taking an average of 18-24 months" and often longer.[55] In addition, the United States continuously reviews its vetting processes "to ensure that the most updated and

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[52] *See Living in Limbo*, at 31.

[53] Letter From Former National Security Leaders to U.S. Congress 2-3, Human Rights First (Dec. 2015), http://www.humanrightsfirst.org/sites/default/files/FormerNatSecOfficialsLetterRefugees.pdf.

[54] Human Rights First, *The Syrian Refugee Crisis and the Need for U.S. Leadership* 16 (Feb. 2016), https://www.humanrightsfirst.org/sites/default/files/HRFSyrianRefCrisis.pdf.

[55] The White House, *Two Former Homeland Security Secretaries Wrote President Obama on Safely Welcoming Syrian Refugees* (Nov. 19, 2015), https://obamawhitehouse.archives.gov/blog/2015/11/19/two-former-homeland-security-secretaries-wrote-president-obama-safely-welcoming.

rigorous measures are applied, and any additional enhancements can be added without halting refugee resettlement or banning people from certain countries."[56]

This rigorous process already makes the resettlement process "an unattractive option for terrorists trying to infiltrate the U.S."[57] And the requirements are even more rigorous for Syrian refugee applicants, all of whom are subject to additional background investigations and heightened levels of scrutiny. For these Syrian refugee applicants, a Refugee Affairs Division ("RAD") officer conducts enhanced reviews at the USCIS headquarters, and the RAD officer can refer cases, where necessary, to the Fraud Detection and National Security Directorate of USCIS for additional review.[58]

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[56] Letter from Bipartisan Group of Former Officials to President Donald J. Trump, Human Rights First (Mar. 10, 2017), http://www.humanrightsfirst.org/sites/default/files/LetterFormerOfficialsonMarch6EO.pdf.

[57] The Heritage Foundation, *The U.S. Refugee Admissions Program: A Roadmap for Reform* 4 (2017), http://www.heritage.org/sites/default/files/2017-07/BG3212.pdf.

[58] Harvard Law School, *Fulfilling U.S. Commitment to Refugee Resettlement: Protecting Refugees, Preserving National Security & Building the U.S. Economy through Refugee Admissions* 22 (2017), https://harvardimmigrationclinic.files.wordpress.com/2017/06/syria-final-draft-v9.pdf.

Moreover, the United States considers "only the most vulnerable" refugees as candidates for resettlement, such as children, women, and survivors of torture and violence.[59] In other words, "[r]efugees are victims, not perpetrators, of terrorism[,]"[60] and the vetting process allows the United States to "safely admit the most vulnerable refugees while protecting the American people."[61]

Notwithstanding these precautions, the issuance of the travel ban has essentially ground the U.S. resettlement program to a halt. USCIS resettlement interviewing officers returned to the United States in the wake of the first executive order, and the referral of new resettlement cases

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[59] The White House, *Two Former Homeland Security Secretaries Wrote President Obama on Safely Welcoming Syrian Refugees* (Nov. 19, 2015), https://obamawhitehouse.archives.gov/blog/2015/11/19/two-former-homeland-security-secretaries-wrote-president-obama-safely-welcoming.

[60] Letter from Former National Security Leaders to U.S. Congress 2-3, Human Rights First (Dec. 2015), http://www.humanrightsfirst.org/sites/default/files/FormerNatSecOfficialsLetterRefugees.pdf.

[61] The White House, *Two Former Homeland Security Secretaries Wrote President Obama on Safely Welcoming Syrian Refugees* (Nov. 19, 2015), https://obamawhitehouse.archives.gov/blog/2015/11/19/two-former-homeland-security-secretaries-wrote-president-obama-safely-welcoming.

to the United States has largely stopped. In addition, U.S. resettlement processing centers overseas terminated many positions following the order.[62] Resettlement experts in Africa have reported that, due to the cuts and resulting delays in U.S. resettlement processing, it will likely take as long as five years or more to process refugee cases for resettlement.[63] This needless suspension offers little or nothing for the United States, while undeniably generating intense suffering that is contrary to our national security interests.

B. Vetted Refugees Must Now Be Absorbed by Countries Like Turkey, Lebanon, and Jordan, Contributing to Instability Contrary to U.S. Security Interests.

Former military and national security officials have made clear that supporting front-line refugee hosting states through resettlement advances U.S. national security interests. These front-line nations include several U.S. allies. Three in particular currently host the most Syrian refugees: Turkey, Lebanon, and Jordan.[64]

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[62] Human Rights First, *U.S. Leadership Forsaken: Six Months of the Trump Refugee Bans* 4 (2017), http://www.humanrightsfirst.org/resource/us-leadership-forsaken-six-months-trump-refugee-bans.

[63] *Id.* at 5.

[64] The Heritage Foundation, *The U.S. Refugee Admissions Program: A Roadmap for Reform* 3 (2017), http://www.heritage.org/sites/default/files/2017-07/BG3212.pdf.

The large numbers of Syrian refugees living in these countries is placing tremendous strains on critical infrastructures there—including those supplying water, electricity, sanitation, health care, and education.[65] Left unaddressed, "the strain will feed instability and trigger more violence across the region, which will have consequences for U.S. national security."[66]

The United States historically has been a "global leader in protecting and resettling persecuted refugees,"[67] and the USRAP "has proven integral to preserving and building goodwill with U.S. allies in the Middle East."[68] As the refugee crisis grows, the United States has an opportunity to help relieve the strain on Turkey, Lebanon, and Jordan by resettling more refugees, which "would

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[65] Human Rights First, *The Syrian Refugee Crisis and the Need for U.S. Leadership* 27 (2016), https://www.humanrightsfirst.org/sites/default/files/HRFSyrianRefCrisis.pdf.

[66] Ryan Crocker, *The Case for Accepting Syrian Refugees*, WALL ST. J. (Nov. 17, 2015), https://www.wsj.com/articles/the-case-for-accepting-syrian-refugees-1447803302.

[67] Human Rights First, *U.S. Leadership Forsaken: Six Months of the Trump Refugee Bans* 1 (2017), http://www.humanrightsfirst.org/resource/us-leadership-forsaken-six-months-trump-refugee-bans.

[68] Harvard Law School, *Fulfilling U.S. Commitment to Refugee Resettlement: Protecting Refugees, Preserving National Security & Building the U.S. Economy through Refugee Admissions* 12 (2017), https://harvardimmigrationclinic.files.wordpress.com/2017/06/syria-final-draft-v9.pdf.

safeguard the stability of these nations and thereby advance [the U.S.'s] own national security interests."[69,70] Instead, however, the United States has decreased the number of refugees it will accept, setting a historically low annual limit of 50,000 for fiscal year 2017 (down from 85,000 for fiscal year 2016 and the original fiscal year 2017 ceiling of 110,000).[71] The direct consequence of the ban is to exacerbate deteriorating conditions in Turkey, Lebanon, and Jordan, causing more human suffering and serving only to destabilize an entire region.

a. **Turkey**

Turkey is a NATO ally that, along with Jordan and Iraq, hosts U.S. military bases used in conducting operations against ISIS and al Qaeda

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[69] Michael V. Hayden & James Stavridis, *U.S. Must Lead On Refugee Crisis*, MIAMI HERALD (July 8, 2016), http://www.miamiherald.com/opinion/op-ed/article88582362.html.

[70] Human Rights First, *U.S. Leadership Forsaken: Six Months of the Trump Refugee Bans* 1 (2017), http://www.humanrightsfirst.org/resource/us-leadership-forsaken-six-months-trump-refugee-bans.

[71] The Heritage Foundation, *The U.S. Refugee Admissions Program: A Roadmap for Reform* 5-6 (2017), http://www.heritage.org/sites/default/files/2017-07/BG3212.pdf.

in Syria and Iraq.[72] Turkey has hosted the largest number of refugees in the world for the last three years, with an estimated 2.9 million refugees in 2016.[73] The burden for caring for these refugees has overwhelmed Turkish resources, causing great hardship.[74]

Aid workers in Turkey report "increasing instances of child labor and early marriage" among Syrian refugees in Turkey.[75] According to a 2015 Human Rights Watch Report, of the 708,000 Syrian children residing in Turkey, over 400,000 were not attending school due to language barriers and a lack of temporary education centers.[76] In 2017, despite efforts by the government to reduce the number of Syrian children

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[72] Harvard Law School, *Fulfilling U.S. Commitment to Refugee Resettlement: Protecting Refugees, Preserving National Security & Building the U.S. Economy through Refugee Admissions* 15 (2017), https://harvardimmigrationclinic.files.wordpress.com/2017/06/syria-final-draft-v9.pdf.

[73] UNHCR, *Global Trends: Forced Displacement in 2016* 3 (2017), http://www.unhcr.org/5943e8a34.

[74] International Crisis Group, *Turkey's Refugee Crisis: The Politics of Permanence* (2016), https://www.crisisgroup.org/europe-central-asia/western-europemediterranean/turkey/turkey-s-refugee-crisis-politics-permanence.

[75] Human Rights First, *The Syrian Refugee Crisis and the Need for U.S. Leadership* 8 (2016), https://www.humanrightsfirst.org/sites/default/files/HRFSyrianRefCrisis.pdf.

[76] Human Rights Watch, *Turkey: 400,000 Syrian Children Not in School* (2015), https://www.hrw.org/news/2015/11/08/turkey-400000-syrian-children-not-school.

without access to education, there were still, according to UNICEF, at least 380,000 out of school.[77] Meanwhile, Turkey's large influx of refugees has caused wages and fees for services to drop by 80 percent, exacerbating working conditions among the most vulnerable Turkish citizens and Syrian refugees.[78] Moreover, Turkey faces an unemployment rate of 12.6 percent.[79] Even with financial assistance, Turkey is not likely to overcome these challenges without refugee resettlement assistance.[80]

The United States could help Turkey by increasing the number of vetted refugees it resettles. Instead, refugee resettlement from Turkey has fallen by 79 percent in the first five months of

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[77] *See* UNICEF, *Over 40 Per Cent of Syrian Refugee Children in Turkey Missing Out on Education, Despite Massive Increase in Enrollment Rates* (2017) www.unicef.org/media/media_94417.html.

[78] Human Rights First, *The Syrian Refugee Crisis and the Need for U.S. Leadership* 8 (2016), https://www.humanrightsfirst.org/sites/default/files/HRFSyrianRefCrisis.pdf.

[79] *Turkey's Unemployment Rate Rises to 12.6 Percent in February*, DAILY SABAH (May 15, 2017), https://www.dailysabah.com/economy/2017/05/15/turkeys-unemployment-rate-rises-to-126-percent-in-february.

[80] *See* Bill Frelick, *Syrian Refugee Kids Still Out of School in Turkey*, Human Rights Watch (Jan. 23, 2017), https://www.hrw.org/news/2017/01/23/syrian-refugee-kids-still-out-school-turkey.

2017.[81] This does not help an already tense situation in Turkey, where there are fears of an expansion of the Syrian conflict. This undoubtedly threatens "the United States' ability to conduct counterterrorism operations, and to ensure regional stability and national security in the long term."[82]

b. Lebanon

Lebanon, another U.S. ally that has contended with ISIS and al-Qaeda activity near its border with Syria,[83] hosts more than 1 million Syrian refugees.[84] Remarkably, nearly 25 percent of Lebanon's population is now comprised of these refugees.[85] Approximately 93 percent of refugees

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[81] Human Rights First, *U.S. Leadership Forsaken: Six Months of the Trump Refugee Bans* 8 (2017), http://www.humanrightsfirst.org/resource/us-leadership-forsaken-six-months-trump-refugee-bans.

[82] Harvard Law School, *Fulfilling U.S. Commitment to Refugee Resettlement: Protecting Refugees, Preserving National Security & Building the U.S. Economy through Refugee Admissions* 16 (2017), https://harvardimmigrationclinic.files.wordpress.com/2017/06/syria-final-draft-v9.pdf.

[83] The Heritage Foundation, *The U.S. Refugee Admissions Program: A Roadmap for Reform* 3 (2017), http://www.heritage.org/sites/default/files/2017-07/BG3212.pdf.

[84] UNHCR, *Lebanon: Refugee and Asylum Seekers* (2017), http://reporting.unhcr.org/node/15981.

[85] Brookings, *Syrian Refuges and the Slow March to 'Acceptance'* (2017), https://www.brookings.edu/blog/future-

live in poverty under the host country's guidelines, and 55 percent live in substandard housing.[86] Families in Lebanon are eating much less and marrying off their young teen girls "because their parents could no longer afford to feed all in the family."[87] Aid workers in Lebanon have noted an increase in the number of Syrian refugee "street children" begging and street vending.[88] Meanwhile, Lebanon's attitude towards refugees has become increasingly negative and hostile.[89]

c. Jordan

Jordan is a close and longstanding U.S. ally. President Trump has referred to Jordan as "a staunch ally and partner" in the fight against ISIS, and a "source of stability and hope."[90] As a

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development/2017/09/07/syrian-refugees-and-the-slow-march-to-acceptance/.

[86] Human Rights First, *The Syrian Refugee Crisis and the Need for U.S. Leadership* 7-8 (2016), https://www.humanrightsfirst.org/sites/default/files/HRFSyrianRefCrisis.pdf.

[87] *Id.* at 8.

[88] *Id.*

[89] National Public Radio, *In Lebanon, Syrian Refugees Met With Harassment and Hostility* (Sept. 2, 2017), http://www.npr.org/sections/parallels/2017/09/02/547906231/in-lebanon-syrian-refugees-met-with-harassment-and-hostility.

[90] The White House, *Remarks by President Trump and His Majesty King Abdullah II of Jordan in Joint Press Conference* (Apr. 5, 2017), https://www.whitehouse.gov/the-press-

result of the refugee influx, however, Jordan faces a crippling water crisis. Jordan hosts "at least 656,230 registered refugees (1.4 million in total, according to King Abdullah II)[,]"[91] and has the second highest number of refugees per capita in the world.[92] Jordan is currently able to provide only 150 cubic meters of water per person annually—considerably less than the UN-defined threshold for water scarcity: 500 cubic meters of water per person.[93,94]

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office/2017/04/05/remarks-president-trump-and-his-majesty-king-abdullah-ii-jordan-joint.

[91] Harvard Law School, *Fulfilling U.S. Commitment to Refugee Resettlement: Protecting Refugees, Preserving National Security & Building the U.S. Economy through Refugee Admissions* 15 (2017), https://harvardimmigrationclinic.files.wordpress.com/2017/06/syria-final-draft-v9.pdf.

[92] UNHCR, *Jordan Factsheet* 1 (2017), http://reliefweb.int/sites/reliefweb.int/files/resources/JordanFactSheetJanuary2017-FINAL.pdf.

[93] The White House, *Remarks by President Trump and His Majesty King Abdullah II of Jordan in Joint Press Conference* (Apr. 5, 2017), https://www.whitehouse.gov/the-press-office/2017/04/05/remarks-president-trump-and-his-majesty-king-abdullah-ii-jordan-joint.

[94] Oxfam, *Syrian Refugee Influx Adding to Jordan's Water Worries* (2013), https://www.oxfam.ca/blogs/conflict-emergencies/refugee-influx-adding-to-jordans-water-worries.

Meanwhile, only one in five Syrian refugees live in refugee camps, and 93 percent of those outside of these camps live in poverty.[95] Consequences for Syrian children in Jordan include increased rates of child marriage and child labor,[96,97] and low rates of school enrollment.[98] The Jordanian government has severely cut medical care for Syrian refugees.[99] And Syrian refugees have strained the pre-existing medical care and school systems for Jordanians, which has in-

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[95] UNHCR, *Jordan Factsheet* 1 (2017), http://reliefweb.int/sites/reliefweb.int/files/resources/JordanFactSheetJanuary2017-FINAL.pdf.

[96] United Nations Office of the Secretary-General's Envoy on Youth, *New Study Finds Child Marriage Rising Among Most Vulnerable Syrian Refugees* (Feb. 8, 2017), http://www.un.org/youthenvoy/2017/02/new-study-finds-child-marriage-rising-among-vulnerable-syrian-refugees/.

[97] Andrew Hosken, *Syrian Child Refugees 'Being Exploited in Jordan'*, BBC NEWS (Nov. 4, 2015), http://www.bbc.com/news/world-middle-east-34714021.

[98] Human Rights Watch, *Barriers to Education for Syrian Refugee Children in Jordan: Summary* (Aug. 16, 2016), https://www.hrw.org/report/2016/08/16/were-afraid-their-future/barriers-education-syrian-refugee-children-jordan.

[99] Ruth Sherlock, *Jordan Repeals Free Medical Aid for Syrian Refugees*, THE TELEGRAPH (Nov. 28, 2014), http://www.telegraph.co.uk/news/worldnews/middleeast/syria/11261468/Jordan-repeals-free-medical-aid-for-Syrian-refugees.html.

creased negative attitudes in Jordan toward Syrian refugees.[100] These negative attitudes manifest themselves in the form of teachers singling out Syrian refugee students for corporal punishment and Jordanian peers bullying their Syrian counterparts.[101]

C. Banning and Delaying Resettlement of Military Interpreters and Other U.S.-Affiliated Iraqis Breaks Faith with Those Who Supported the United States.

In addition to blocking the resettlement of vetted refugees from Turkey, Lebanon, and Jordon, the travel ban also affects vetted Iraqis affiliated with the United States. As noted, these include military interpreters, translators, and other personnel who supported the U.S. military, U.S. government, and other U.S. entities. As veterans and former military leaders have attested, interpreters and other U.S. allies "wore our uniforms, ate our food, bled our blood, saved our lives and

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[100] Rana F. Sweis, *Resentment Grows Against Syrian Refugees in Jordan*, N.Y. TIMES (May 9, 2013), http://www.nytimes.com/2013/05/09/world/middleeast/09iht-m09-jordan-syria.html.

[101] Human Rights Watch, *supra* note 98.

killed our enemies."[102,103] Even though President Trump removed Iraq from the list of banned countries in March 2017, the travel ban nonetheless temporarily halts the entire USRAP for all countries, including Iraq.[104] For these Iraqi wartime allies, their primary path to safety is through the USRAP. Previously, there was a Special Immigrant Visa program for Iraqis, but that program ceased taking new applications as of September 30, 2014.[105] Moreover, U.S.-affiliated Iraqis, like

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[102] Matt Zeller, *Leave No Interpreter Behind*, USA TODAY (June 22, 2015), https://www.usatoday.com/story/opinion/2015/06/22/afghanistan-iraq-army-interpreters-resettlement-column/28905403/.

[103] *See also* Letter from Veterans for American Ideals to President Donald J. Trump (Jan. 29, 2017) ("[M]any veterans can point to a moment when one of our foreign allies saved our lives – often by taking up arms against our common enemies. They acted because they believed in America, in our mission, and in the promise that was given."), http://www.humanrightsfirst.org/sites/default/files/VFAI%20Open%20Letter.pdf.

[104] Corrected Br. of Former National Security Officials as Amici Curiae in Support of Plaintiff-Appellees and Against a Stay Pending Appeal at 17-18, *IRAP v. Trump*, No. 8:17-cv-00361-TDC (4th Cir. Apr. 13, 2017), https://cases.justia.com/federal/appellate-courts/ca4/17-1351/126/0.pdf?ts=1494442944.

[105] *See* Human Rights First, *Fact Sheet, President Trump's Executive Order on Refugees Harms Our Iraqi Allies* (2017), http://www.humanrightsfirst.org/sites/default/files/P2-SIV-Iraqis-Factsheet.pdf; *see also* U.S. Dep't of State, Bureau of Consular Affairs, *Special Immigrant Visas for Iraqis – Who Were Employed by/on Behalf of the*

all other vetted refugees, are subject to the overall reduction in refugee admissions—despite being given priority access to U.S. resettlement under the RCIA.[106] As a result, their resettlement "will now likely be delayed as security clearance and other approvals expire, adding many more months onto their processing."[107]

As former military leaders and former national security officers have stated, the United States has a "moral obligation to protect these allies,"[108] but instead betrays them by letting them languish in unsafe conditions. In reference to the RCIA's passage in 2007, co-sponsor Senator Kennedy observed that the U.S. recognized its "fundamental obligation to assist the Iraqis who have courageously supported our forces and our effort in Iraq and whose lives are in peril as a result."[109]

U.S. Government, https://travel.state.gov/content/visas/en/immigrate/iraqis-work-for-us.html (last visited Aug. 2, 2017).

[106] Letter from Bipartisan Group of Former Officials to President Donald J. Trump, at 1-2 (Mar. 10, 2017), http://www.humanrightsfirst.org/sites/default/files/Letter-FormerOfficialsonMarch6EO.pdf.

[107] *Id.*

[108] *Id.* at 2.

[109] Human Rights First, Living in Limbo: Iraqi Refugees and U.S. Resettlement 30 (2010), http://www.humanrightsfirst.org/wp-content/uploads/Living-in-Limbo-final.pdf.

To this end, the RCIA created designated pathways for U.S.-affiliated Iraqis to apply for U.S. resettlement, including through the DAP for U.S.-affiliated Iraqis.[110] Currently nearly 60,000 Iraqis are waiting to be processed for resettlement through this program.[111] While the United States resettled nearly 4,000 Iraqi refugees during the first six months of 2016, the United States resettled only 1,795 Iraqi refugees during the first six months of 2017, a decline of 55 percent.[112]

Behind these numbers are many individual stories.[113] For example, Anas Nasir, a 30-year-old Iraqi, worked for a U.S. security contractor in Baghdad, and later received many death threats as a result. He has applied for admission to the United States, but has not yet received permission to resettle.[114]

In return for the service of these Iraqis, as veteran James LaPorta told the Washington Post,

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[110] Human Rights First, *supra* note 105, at 1.

[111] *Id.* at 2

[112] Human Rights First, *U.S. Leadership Forsaken: Six Months of the Trump Refugee Bans* 11 (2017), http://www.humanrightsfirst.org/sites/default/files/HRF-US-Leadership-Forsaken-FINAL.pdf.

[113] *Id.*

[114] Tim Arango, *'You Have Let Us Down, Trump': Iraqis See U.S. Relations Recast*, N.Y. TIMES (Jan. 30, 2017) https://www.nytimes.com/2017/01/30/world/middleeast/iraq-trump-refugee-ban.html?mcubz=1.

the United States "promised to help give them asylum. . . . We promised to leave no man behind."[115] But now, because of the travel ban, "[i]t just seems more like a cheap bumper sticker than a bond of trust."[116]

D. Banning the Resettlement of Refugees Makes It More Difficult for the United States to Recruit Foreign Allies, Undermines Ongoing and Future U.S. Military Operations, and Endangers U.S. Troops.

The travel ban also undermines ongoing and future U.S. military operations by "discouraging future assistance and cooperation from . . . affected military allies and partners . . . ."[117] The travel ban "sends a very negative message to countries where we will need indigenous support"[118] because, without the ability to offer safety

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[115] Dan Lamothe, *Among Veterans, Raw Responses to Trump's Effort to Block Refugees and Others from Muslim Countries*, WASH. POST (Jan 29, 2017), https://www.washingtonpost.com/news/checkpoint/wp/2017/01/29/among-veterans-raw-responses-to-trumps-effort-to-block-refugees-and-others-from-muslim-countries/?utm_term=.0d74b8cb980e.

[116] *Id.*

[117] Corrected Br. of Former National Security Officials as Amici Curiae in Support of Plaintiff-Appellees and Against a Stay Pending Appeal, *supra* note 104, at 18.

[118] Hollie McKay, *U.S.-backed Iraqi Fighters say Trump's Refugee Ban Feels like 'Betrayal,'* FOX NEWS (Jan. 27,

to interpreters, peacekeepers, and other local national allies, "we will be reducing the likelihood that those in countries targeted by the ban will work with us in the future."[119] This will serve only to "endanger U.S. troops in the field" by sending exactly the wrong message to those who "have risked much or all to keep Americans safe—and whom our officers had promised always to protect with the full might of our government and our people."[120,121,122] This result is plainly not in the best interests of the United States.

2017), http://www.foxnews.com/politics/2017/01/27/u-s-backed-iraqi-fighters-say-trumps-refugee-ban-feels-like-betrayal.html.

[119] Jeff Stein, *Spy Veterans Say Trump's Muslim Country Visa Ban Will Hurt Recruitment*, Newsweek (Jan. 28, 2017 7:32 PM), http://www.newsweek.com/spy-veterans-trump-visa-ban-hurt-recruitment-549588.

[120] Joint Decl. of Madeleine K. Albright, Avril D. Haines, Michael V. Hayden, John F. Kerry, John E. McLaughlin, Lisa O. Monaco, Michael J. Morell, Janet A. Napolitano, Leon E. Panetta, Susan E. Rice, *Washington v. Trump*, No. 17-35105 (9th Cir. 2017), https://assets.documentcloud.org/documents/3454270/Declaration-of-National-Security-Officials.pdf.

[121] *See also* David Cohen, *How Trump Hurts the Spying Business*, N.Y. Times (May 16, 2017) (stating that the Trump administration's policies are "[t]arnishing the idea that America stands for something uniquely good" and "makes it harder for the CIA to recruit spies"), https://www.nytimes.com/2017/05/16/opinion/how-trump-hurts-the-spying-business.html?_r=0.

[122] *See also* Michael V. Hayden, *Former CIA Chief: Trump's Travel Ban Hurts American Spies – and America*, Wash.

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[115] Dan Lamothe, *Among Veterans, Raw Responses to Trump's Effort to Block Refugees and Others from Muslim Countries*, WASH. POST (Jan 29, 2017), https://www.washingtonpost.com/news/checkpoint/wp/2017/01/29/among-veterans-raw-responses-to-trumps-effort-to-block-refugees-and-others-from-muslim-countries/?utm_term=.0d74b8cb980e.

[116] *Id.*

[117] Corrected Br. of Former National Security Officials as Amici Curiae in Support of Plaintiff-Appellees and Against a Stay Pending Appeal, *supra* note 104, at 18.

[118] Hollie McKay, *U.S.-backed Iraqi Fighters say Trump's Refugee Ban Feels like 'Betrayal,'* FOX NEWS (Jan. 27,

to interpreters, peacekeepers, and other local national allies, "we will be reducing the likelihood that those in countries targeted by the ban will work with us in the future."[119] This will serve only to "endanger U.S. troops in the field" by sending exactly the wrong message to those who "have risked much or all to keep Americans safe—and whom our officers had promised always to protect with the full might of our government and our people."[120,121,122] This result is plainly not in the best interests of the United States.

2017), http://www.foxnews.com/politics/2017/01/27/u-s-backed-iraqi-fighters-say-trumps-refugee-ban-feels-like-betrayal.html.

[119] Jeff Stein, *Spy Veterans Say Trump's Muslim Country Visa Ban Will Hurt Recruitment*, Newsweek (Jan. 28, 2017 7:32 PM), http://www.newsweek.com/spy-veterans-trump-visa-ban-hurt-recruitment-549588.

[120] Joint Decl. of Madeleine K. Albright, Avril D. Haines, Michael V. Hayden, John F. Kerry, John E. McLaughlin, Lisa O. Monaco, Michael J. Morell, Janet A. Napolitano, Leon E. Panetta, Susan E. Rice, *Washington v. Trump*, No. 17-35105 (9th Cir. 2017), https://assets.documentcloud.org/documents/3454270/Declaration-of-National-Security-Officials.pdf.

[121] *See also* David Cohen, *How Trump Hurts the Spying Business*, N.Y. Times (May 16, 2017) (stating that the Trump administration's policies are "[t]arnishing the idea that America stands for something uniquely good" and "makes it harder for the CIA to recruit spies"), https://www.nytimes.com/2017/05/16/opinion/how-trump-hurts-the-spying-business.html?_r=0.

[122] *See also* Michael V. Hayden, *Former CIA Chief: Trump's Travel Ban Hurts American Spies – and America*, Wash.

II. Whatever Its Intention, the Travel Ban is Perceived Abroad as a "Muslim Ban," Reinforcing the Perception that the United States Is at War with Islam, Further Harming Our Interests.

Whatever intentions underpin the travel ban, it is perceived as a "Muslim Ban" abroad, not only because of the statements that preceded and accompanied its release, but also because it disproportionally affects Muslims.[123] This perception reinforces the idea that the United States is at war with Islam and damages U.S. efforts to build stronger relationships in volatile regions. This is important because the U.S. military relies on the goodwill of many Muslim communities abroad. The travel ban alienates our majority-Muslim allies in the Middle East and elsewhere, threatening the goodwill of those communities.

Post (Feb. 5, 2017), https://www.washingtonpost.com/opinions/former-cia-chief-trumps-travel-ban-hurts-american-spies--and-america/2017/02/05/a5acce36-ebd9-11e6-9973-c5cfb7ccfb0d_story.html?utm_term=.155afc6ba632.

[123] *See generally* Human Rights First, *supra* note 112.

A. The Ban Disproportionately Affects Muslims.

Since President Trump issued the Executive Order, the actual number of resettled Muslim refugees has plunged dramatically.[124] As of July 2017, Muslims now make up only a small minority of the recently-resettled refugee population in the United States.[125] Conversely, non-Muslims represent a large majority, up significantly from the six months before the Executive Order.[126]

Moreover, the Pew Research Center has found that the religious composition of refugees has shifted monthly since February 2017, just after President Trump's first executive order.[127] Notably, Muslims have been adversely impacted by this change.[128]

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[124] *Id.* at 2.

[125] *Id.* at 8.

[126] *Id.*

[127] Phillip Connor & Jens Manuel Krogstad, *In First Months of Trump Presidency, Christians Account for Growing Share of U.S. Refugee Arrivals*, Pew Research Center (July 12, 2017), http://www.pewresearch.org/fact-tank/2017/07/12/in-first-months-of-trump-presidency-christians-account-for-growing-share-of-u-s-refugee-arrivals/.

[128] *Id.*

The reduction in admitted Muslim refugees is even more pronounced when narrowed to individual Muslim-majority countries, where the declines in refugee resettlements are most significant. For example, in the six months since the issuance of the first executive order, the United States has cut its resettlement of Syrian refugees by 80 percent.[129] Since then, the United States has resettled only 1,573 Syrian refugees, whereas the United States had resettled over 15,000 Syrian refugees in the previous calendar year.[130] The decline is so significant that Syria is no longer in the top five countries of origin for refugee resettlement in the United States—despite Syria representing the largest global resettlement need.[131] Even after President Trump's removal of explicit reference to the indefinite ban on Syrians in the second Executive Order, Syria has dropped further on the list.[132]

The number of refugees from Iraq resettled in the United States similarly has declined, falling by 55 percent since the first executive order when compared to the first six months of 2016.[133] Only 2,884 refugees have resettled from Jordan between January and May 2017, despite over

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[129] Human Rights First, *supra* note 112, at 6.
[130] *Id.*
[131] *Id.* at 6-7.
[132] *Id.*
[133] *Id.* at 3, 11.

19,000 having resettled from Jordan in 2016.[134] Resettlement from Turkey, which is the world's largest refugee hosting country, has declined by 70 percent.[135] Resettlement from Lebanon has also seen a 35 percent decline.[136]

B. Good Relations within Muslim Communities Are Critical to U.S. Security Interests and Jeopardized by the Travel Ban.

The travel ban's disproportionate impact on Muslims feeds the perception that the United States is engaged in a religious war with Islam. This perception is a present danger to U.S. efforts to build relationships with Muslim communities in volatile regions. The importance of these relationships is particularly evident in Iraq and Afghanistan, where the hostility or support of a local community is often critical to the safety of an entire U.S. base, the success of a mission, and, by extension, overall U.S. national security.

The U.S. Army Field Manual on Counterinsurgency emphasizes the importance of establishing and maintaining relationships in places in which the military conducts counterinsurgency operations, recognizing that trusted networks

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[134] *Id.* at 9.

[135] *Id.*

[136] *Id.* at 10.

"displace enemy networks" and include "local allies, community leaders, and local security forces."[137] Conversely, "[a]ctions that undermine trust or disrupt these [trusted] networks—even those that provide a short-term military advantage—help the enemy."[138] The Army Field Manual further cites then-Marine Corps Major General James Mattis for his maxims "first do no harm" and "no better friend-no worse enemy."[139] Major General Mattis worked to establish a secure local environment by diminishing support for the insurgency and maintaining the support of various Iraqi factions.[140]

Operators in the field agree. For example, Peter Keirnan, a former special operations Marine, explains that the U.S. military yields strategic advantages in countries abroad by forming a "partner force" with the local commandos.[141] U.S. and partner forces fight "arm-in-arm on raids against Taliban insurgencies in the deserts and

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[137] U.S. Dep't of the Army, FM 3-24, Counterinsurgency A-5 (2006), http://usacac.army.mil/cac2/Repository/Materials/COIN-FM3-24.pdf.

[138] *Id.*

[139] *Id.*

[140] *Id.* at 4-7.

[141] Peter James Kiernan, *A Former MARSOC Raider Explains how the Travel Ban Endangers Special Operations Forces*, Task & Purpose (Feb. 2, 2017), http://taskandpurpose.com/former-marsoc-raider-explains-travel-ban-endangers-special-operations-forces/.

mountains of Afghanistan."[142] The most essential elements underlying this relationship are "respect and trust."[143] The travel ban, however, "shatters the trust these teams have painstakingly built."[144]

As Michael Leiter, the former director of the National Counterterrorism Center emphasized:

> [W]e have to remember the ways in which [the travel ban] alienates the people with whom we have to partner, domestically and internationally. It's the Muslim community in the U.S which helps us identify terrorists and radicalized individuals and stop them. And critically, it's the international partners that we need help from in the Middle East and majority Muslim nations who I fear will be alienated by some of these steps.[145]

As the United States presents itself in ways that reinforce the impression that it is anti-Islam, the

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[142] *Id.*

[143] *Id.*

[144] *Id.*

[145] PBS NEWSHOUR, *Immigration Ban Misses Greatest Threat, Counterterrorism Expert Says* (Jan. 31, 2017, 6:45 PM), http://www.pbs.org/newshour/bb/immigration-ban-misses-greatest-threat-counterterrorism-expert-says/.

result may very well be that it will lose help and goodwill from these partners.

Working with local communities can also help reduce violence. For example, in 2006, Marine Corps leaders in Iraq were approached by several Iraqi leaders, who were "more fearful of Al Qaeda in Iraq than of the Americans," to team up against the insurgents.[146] Within a year, violence in the province "dropped dramatically."[147] Reduced violence in these regions saved American lives.[148] This relationship, however, may not have existed had the Iraqi leaders felt differently about approaching Americans.

Not only will local communities become more hesitant to work with the United States, terrorists have and will exploit the perception that the travel ban is a Muslim ban. In addition, the Executive Order has even chilled U.S. relations with nations that are not directly implicated by its terms. Politicians in Malaysia have called it "inhumane" and have urged the Malaysian Prime Minister to condemn the U.S.'s position. Indonesian Foreign Minister Retno Marsudi told Reuters

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[146] Dexter Filkins, *James Mattis, A Warrior in Washington*, THE NEW YORKER (May 29, 2017), http://www.newyorker.com/magazine/2017/05/29/james-mattis-a-warrior-in-washington.

[147] *Id.*

[148] *See id.*

that the government held "deep regrets about the policy."[149] Their concern is justified. Shortly after the travel ban took effect, human rights activists protested in Indonesia and Malaysia, calling upon their respective governments to take action.[150] The leader of the opposition in Indonesia stated that the travel ban encourages Islamic radicalization.[151] The foreign relations fallout from the Executive Order thus extends beyond relationships with the specific nations identified in the order.

C. The Travel Ban Fuels Anti-U.S. Terrorist Propaganda.

After its issuance, the first executive order was immediately condemned by intelligence officials and military veterans.[152] Robert Richer, for-

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[149] Nyshka Chandran, *Trump's Immigration Order Troubles Muslim-Majority Indonesia, Malaysia*, CNBC (Jan. 29, 2017, 8:01 PM), https://www.cnbc.com/2017/01/29/trumps-immigration-order-reverberates-to-indonesia-malaysia.html.

[150] Francis Chan & Trinna Leong, *Travel Ban Stirs Unease In Indonesia, Malaysia*, THE STRAITS TIMES (Feb. 5, 2017, 5:00 AM), http://www.straitstimes.com/asia/travel-ban-stirs-unease-in-indonesia-malaysia.

[151] *Id.*

[152] *See, e.g.*, PBS NEWSHOUR, *Immigration Ban Misses Greatest Threat, Counterterrorism Expert Says* (Jan. 31, 2017, 6:45 PM), http://www.pbs.org/newshour/bb/immigration-ban-misses-greatest-threat-counterterrorism-expert-

mer deputy chief of the CIA Operations Directorate, categorized the ban as "a win for jihadists and other anti-U.S. forces," as "[i]t fuels the belief out there that Americans are anti-Islam."[153] In a separate interview, former CIA director general Michael Hayden stated:

> what we're doing now has probably made us less safe today . . . we are now living the worst jihadist narrative possible, that there is undying enmity between Islam and the West. Muslims out there who were not part of the jihadist movement are now being shown that the story they're being told by the jihadists – they hate us; they're our enemy – that's being

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says/; Letter to Secretary Kelly, et. al. from Over 100 Former Officials (Jan. 30, 2017), http://www.politico.com/f/?id=00000159-f0ef-d46b-abdf-f4efdd310001; Eliza Mackintosh, *Trump Ban Is Boon for ISIS Recruitment, Former Jihadists and Experts Say*, CNN (Jan. 31, 2017, 10:51 AM), http://www.cnn.com/2017/01/30/politics/trump-ban-boosts-isis-recruitment/index.html.

[153] Joby Warwick, *Jihadist Groups Hail Trump's Travel Ban as a Victory*, WASH. POST (Jan. 29, 2017), https://www.washingtonpost.com/world/national-security/jihadist-groups-hail-trumps-travel-ban-as-a-victory/2017/01/29/50908986-e66d-11e6-b82f-687d6e6a3e7c_story.html?utm_term=.2595e0d4b6e0.

acted out by the American government.[154]

These concerns are serious and reflect how the Executive Order plays into the hands of extremists. Immediately after the ban took effect, jihadists lauded it for bringing about a new wave of terrorist recruits.[155] Some even praised the ban for fulfilling the predictions of Anwar al-Awlaki, an American born al-Qaeda leader who famously

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[154] National Public Radio, *National Security Council Changes Are Very Significant, Hayden Says* (Jan. 30, 2017, 4:58 AM), http://www.npr.org/2017/01/30/512400246/former-nsa-director-weighs-in-on-national-security-council-changes.

[155] *See, e.g.*, Eliza Mackintosh, *Trump Ban Is Boon for ISIS Recruitment, Former Jihadists and Experts Say*, CNN (Jan. 31, 2017, 10:51 AM), http://www.cnn.com/2017/01/30/politics/trump-ban-boosts-isis-recruitment/index.html; Bethan McKernan, *ISIS Hails Donald Trump's Muslim Immigration Restrictions as a 'Blessed Ban.'* THE INDEPENDENT (Jan. 30, 2017, 11:40 AM), http://www.independent.co.uk/news/world/middle-east/isis-donald-trump-muslim-ban-immigration-iraq-iran-restrictions-travel-islamic-state-us-visa-a7552856.html; Joby Warwick, *Jihadist Groups Hail Trump's Travel Ban as a Victory*, WASH. POST (Jan. 29, 2017), https://www.washingtonpost.com/world/national-security/jihadist-groups-hail-trumps-travel-ban-as-a-victory/2017/01/29/50908986-e66d-11e6-b82f-687d6c6a3e7c_story.html?utm_term=.2595e0d4b6e0.

said that the "West would eventually turn against its Muslim citizens."[156]

Policies such as the Executive Order can have an effect on terrorist recruitment harmful to the United States.[157] Terrorist organizations rely on propaganda as a recruiting tool to encourage the radicalization of civilians.[158] For the propaganda to be effective, it must resonate with the individuals it is meant to target.[159] Social scientists have evaluated the psychological factors that make an individual more susceptible to radicalization:

> The more [] participants reported feeling culturally homeless – that is, fully belonging neither to American culture nor to that of another nation – and discriminated against

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[156] Joby Warwick, *Jihadist Groups Hail Trump's Travel Ban as a Victory*, WASH. POST (Jan. 29, 2017), https://www.washingtonpost.com/world/national-security/jihadist-groups-hail-trumps-travel-ban-as-a-victory/2017/01/29/50908986-e66d-11e6-b82f-687d6e6a3e7c_story.html?utm_term=.2595c0d4b6e0.

[157] Sarah Lyons-Padilla & Michele J. Gelfand, *The Social Scientific Case Against a Muslim Ban*, N.Y. TIMES (Feb. 18, 2017), https://www.nytimes.com/2017/02/18/opinion/sunday/the-social-scientific-case-against-a-muslim-ban.html.

[158] *Id.*

[159] *Id.*

> on the basis of their religion, the more they said they experienced a lack of meaning in their lives. In turn this lack of meaning was associated with greater support for fundamentalist groups and extremist causes.[160]

Terrorists know this and use this to their advantage, specifically relying on the claim that the United States is anti-Islam.[161] The Executive Order promotes the very psychological conditions that contribute to the radicalization threatening our national security.[162]

This line of analysis is nothing new. For years, experts have advised the United States to avoid catering to terrorist propaganda.[163] In a De-

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[160] *Id.*

[161] *Id.*

[162] *Id.*

[163] *See, e.g.*, Letter from Former National Security Leaders to U.S. Congress (Dec. 1, 2015), http://www.humarightsfirst.org/sites/default/files/FormerNatSecOfficialsLetterRefugees.pdf; Michael Hayden & James Stavridis, *U.S. Must Lead on Refugee Crisis*, MIAMI HERALD (July 8, 2016, 8:00 PM), http://www.miamiherald.com/opinion/op-ed/article88582362.html; Jason Riley, *Mistrusting Obama on ISIS – and Refugees*, WALL ST. J. (Nov. 18, 2015, 2:37 PM), https://www.wsj.com/articles/mistrusting-obama-on-isisand-refugees-1447803738.

cember 1, 2015 letter to Congress, several respected national security leaders argued that categorically refusing to take in refugees "only feeds the narrative of ISIS that there is a war between Islam and the West, that Muslims are not welcome in the United States and Europe, and that the ISIS caliphate is their true home."[164] More succinctly, in 2015 former Homeland Security Secretary Michael Chertoff stated: "You do not want to play into the narrative of the bad guy. That's giving propaganda to the enemy."[165] The Executive Order does nothing but send the wrong message at the wrong time at the expense of our national security interests, as well as those of our allies.

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[164] Letter from Former National Security Leaders to U.S. Congress (Dec. 1, 2015), http://www.humarightsfirst.org/sites/default/files/FormerNatSecOfficialsLetterRefugees.pdf.

[165] Jason Riley, *Mistrusting Obama on ISIS – and Refugees*, WALL ST. J. (Nov. 18, 2015, 2:37 PM), https://www.wsj.com/articles/mistrusting-obama-on-isisand-refugees-1447803738.

CONCLUSION

For the foregoing reasons, as well as those briefed by Respondents, the decisions of the courts below should be affirmed.

Respectfully submitted,

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